

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Improving Public Safety Communications)	
In the 800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 800 and 900 MHz Industrial/ Land Transportation and Business Pool Channels)	
To Allocate Spectrum Below 3 GHz for Mobile)	
And Fixed Services to Support the introduction of)	
New Advanced Wireless Services, including)	
Third Generation Wireless Services)	ET Docket No. 00-258
)	
Petition for Rule Making of the Wireless)	
Information Networks Forum Concerning the)	
Unlicensed Personal Communications Service)	RM-9498
)	
Petition for Rule Making of UT Starcom, Inc.,)	
Concerning the Unlicensed Personal)	
Communications Service)	RM-10024
)	
Amendment of Section 2.106 of the Commission's)	
Rules to Allocate Spectrum at 2 GHz for Use by)	
The Mobile Satellite Service)	ET Docket No. 95-18

To: The Commission

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

Preferred Communication Systems, Inc. ("Preferred"), acting through counsel and in accordance with the April 6, 2005 Federal Register Public Notice¹, hereby files its Reply To The Oppositions To The Petitions For Reconsideration filed with respect to certain issues in the *Initial Report and Order* and *Supplemental Order* released in this proceeding.²

¹ 70 Fed. Reg. No. 65, pp. 17327-17328, April 6, 2005 ("*Fed. Reg. Notice*").

² *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969 (2004), as amended by *Erratum*, released

1. BACKGROUND

On December 22, 2004, Preferred, along with Silver Palm Communications, Inc., filed a detailed Petition For Reconsideration of several key aspects of the *Initial Report and Order* in this proceeding ("Petition"). The Commission acknowledged receipt thereof on January 19, 2005.³ Subsequently, the Commission set April 21, 2005 as the deadline for filing oppositions to petitions for reconsideration of both the *Initial Report and Order* and the *Supplemental Order*.⁴ A number of such oppositions were filed.

2. NO OPPOSITIONS WERE DIRECTED TO PREFERRED'S PETITION

Preferred has now reviewed the oppositions filed on April 21. None of those filings refers to or otherwise even mentions the Preferred Petition. Moreover, none of the oppositions filed substantively addresses or seeks to refute or distinguish the detailed analyses provided in or cited by Preferred in support of its Petition. The substantive bases detailed by Preferred for reconsidering the *Initial Report and Order* remain unchallenged. The Commission must duly note this fact and the substance of Preferred's Petition as it reconsiders the terms of that *Report and Order*.

3. PREFERRED CONCURS WITH DUNCAN REPLY

As pointed out by Richard W. Duncan d/b/a Anderson Communications ("Duncan") in its Reply, Nextel claims that this Docket is the only appropriate venue for

September 10, 2004, *Erratum*, DA 04-3208, 19 FCC Rcd. 19651 and *Erratum*, DA 04-3459, released October 29, 2004, *recon. and appeal pending* ("*Initial Report and Order*"); *Supplemental Order and Order On Reconsideration*, 19 FCC Rcd. 25120 (2004), *recon. and appeal pending* ("*Supplemental Order*") (collectively, "*Rebunding Orders*").

³ FCC Public Notice, Report No. 2687, released January 19, 2005.

⁴ *Fed. Reg. Notice, supra*.

addressing the issues raised by Preferred and others; then Nextel simply ignores these issues.⁵

Further, as Preferred has previously echoed, the *Rebanding Orders* discriminate in favor of Nextel and its affiliates to the detriment of non-Nextel Economic Area (“EA”) and site-based licensees like Preferred and Duncan. Yet the Commission has failed to articulate a reasonable and defensible rationale or justification for such discrimination and, as Duncan notes, the resulting devaluation of spectrum rights, for which Preferred, among others, paid many millions of dollars. Preferred wholeheartedly agrees with Duncan’s analysis on this point.

Preferred also agrees that the Commission must reconsider the *Rebanding Orders* in light of the proposed Sprint-Nextel merger.⁶ The *Rebanding Orders*’ grant to Nextel of a nationwide 10 MHz license in the 1.9 GHz band was expressly based on a “value for value” exchange. If the effect of the merger, as Duncan contends, is to fundamentally alter that equation, then the foundation for the Commission’s deal with Nextel on 1.9 GHz spectrum is fatally undermined. Moreover, in light of the Commission’s *Supplemental Order*, that supposed “value-for-value” deal is already based on Nextel receiving well over \$400 million in additional credit for spectrum that it does not directly hold (e.g., is held by Nextel Partners or others). This in itself raises significant questions

⁵ Duncan “Reply To Opposition And Comments Of Nextel Communications Inc. Regarding Petitions For Reconsideration,” April 28, 2005, at p. 4.

⁶ Preferred also filed a Petition To Deny the Sprint-Nextel merger on a variety of grounds, including the grounds that allowing the merger without conditions would only exacerbate the impact of the *Rebanding Orders*. See Petition To Deny of Preferred Communications Systems, Inc., WT Docket No. 05-63, March 30, 2005.

under Federal statutes such as the Anti-Deficiency Act and the auction provisions of the Communications Act.⁷

4. **PREFERRED ALSO CONCURS WITH TRI-STATE RADIO PLANNING COMMITTEE**

Finally, Preferred concurs with the Reply To Opposition filed by the Tri-State Radio Planning Committee, which points out that under the *Rebanding Orders* public safety will lose “operational area” in some cases. Public safety and other potentially affected licensees need to fully realize the true import of the interference and other components of the *Rebanding Orders*’ process.

Respectfully Submitted,

**PREFERRED COMMUNICATION
SYSTEMS, INC.**

By: 

Paul C. Besozzi
Nicholas W. Allard
Stephen Díaz Gavin
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
202-457-5292

⁷ Preferred has raised these and other issues in a Petition For Review of the Supplemental Order filed with the D.C. Circuit on April 11, 2005.

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, with the law firm of Patton Boggs LLP, hereby certify that copies of the foregoing "Reply To Oppositions To Petitions For Reconsideration" were served this 2nd of May 2005, by United States First Class Mail, postage prepaid on the following parties:

Regina M. Keeney
Charles W. Logan
Stephen J. Berman
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, N.W., Suite 802
Washington, DC 20006
Counsel for Nextel Communications, Inc.

Michael D. Rosenthal
Director of Legal and External Affairs
Southern LINC
5555 Glenridge Connector, Suite 500
Atlanta, Georgia 30342

Wayne V. Black
Nichole B. Donath
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 W
Washington, DC 20001
Counsel for the American Petroleum Institute

William J. Donohue
Associate General Counsel –
Corporate & Commercial
Exelon Business Service Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 10101-8699

Michael K. Kurtis
Kurtis and Associates, PLC
6704 Cedar View Court
Clifton, VA 20124

Jill M. Lyon
Vice President & General Counsel
United Telecom Counsel
1901 Pennsylvania Avenue, N.W.
Fifth Floor
Washington, DC 20006

Christine M. Gill
Shirley S. Fujimoto
Jeffrey L. Sheldon
Keith A. McCrickard
McDermott Will & Emery, LLP
600 Thirteenth Street, N.W.
Washington, DC 20005-3096
*Counsel for Entergy Corporation,
Entergy Services, Inc. and Southern LINC*

Harold Mordkofsky
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W.
Washington, DC 20037
*Counsel for Consolidated Edison Company of New
York, Inc.*

David B. Trego
Jason D. Griffith
American Electric Power Company, Inc.
1 Riverside Plaza
Columbus, OH 43215

William K. Keane
Duane Morris LLP
1667 K Street, NW, Suite 700
Washington, DC 20006-1608
*Counsel for the National Association of
Manufacturers and MRFAC, Inc.*

Thomas J. Keller
Louis P. Warchot
Dennis J. Starks
Association of American Railroads
50 F Street, N.W.
Washington, DC 20001

Robert J. Keller
Law Office of Robert J. Keller, PC
P.O. Box 33428-Farragut Station
Washington, DC 20033-3428
Counsel for James A. Kay, Jr.

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs, Chtd.
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
Counsel for AIRPEAK Communications, LLC

Kent S. Foster, President
Silver Palm Communications, Inc.
5454 Wisconsin Ave., Suite 720
Chevy Chase, MD 20815

Gregory C. Staple
R. Edward Price
Vinson & Elkins, LLP
1455 Pennsylvania Ave., N.W.
Washington, DC 20004-1008
*Counsel for TMI Communications and Company,
LP and Terrestar Networks, Inc.*

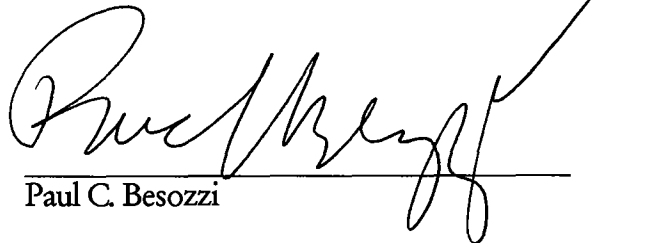
Charles D. Guskey
6237 Baymar Lane
Dallas, TX 75252

Julian L. Shepard
Mark Blacknell
Williams Mullen, PC
1666 K Street, N.W., Suite 1200
Washington, DC 20006-1200
*Counsel for Coastal SMR Network, LLC/ARC,
Inc. and Scott C. MacIntyre*

Charles M. Austin, President
Preferred Communications Systems, Inc.
400 E Royal Lane, Suite N24
Irving, TX 75039

Robert M. Gurss
Director, Legal & Govt. Affairs
Assoc. of Public-Safety Communications
Officials - International
1725 DeSales Street, N.W., Suite 808
Washington, DC 20036

Peter Meade, Chairman
Assistant Fire Marshall
Fire & Rescue Services
Nassau County Fire Commission
140 15th Street
Mineola, NY 11501



Paul C. Besozzi